

Attachment

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# FEDERAL AND STATE SERVICES AND THE MAINE INDIAN



—A report of the Maine Advisory  
Committee to the United States Commission  
on Civil Rights prepared for the information  
and consideration of the Commission.  
This report will be considered by the  
Commission, and the Commission will make  
public its reaction. In the meantime, the  
findings and recommendations of this  
report should not be attributed to the  
Commission, but only to the Maine  
Advisory Committee.

December 1974

# FEDERAL AND STATE SERVICES AND THE MAINE INDIAN

A report prepared by the Maine  
Advisory Committee to the U.S.  
Commission on Civil Rights

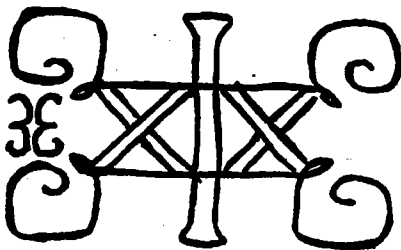
## ATTRIBUTION:

The findings and recommendations contained in this report are those of the Maine Advisory Committee to the U.S. Commission on Civil Rights and, as such, are not attributable to the Commission.

This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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This design, known as the "double-curve motif," is of ancient Penobscot origin and is symbolic of inter-tribal unity. Similar designs are shared by the neighboring Micmacs, Maliseets, and Passamaquoddys who, with the Penobscots, form the Wabanaki Confederacy. This alliance was of considerable political importance from the year 1700 to the late 19th century. Tribal leaders in recent years have been working toward renewed cooperation.

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TO THE

UNITED STATES COMMISSION ON CIVIL RIGHTS

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LETTER OF TRANSMITTAL

MAINE ADVISORY COMMITTEE TO THE  
U.S. COMMISSION ON CIVIL RIGHTS  
December 1974

MEMBERS OF THE COMMISSION  
Arthur S. Flemming, Chairman  
Stephen Horn, Vice Chairman  
Frankie Freeman  
Robert S. Rankin  
Manuel Ruiz, Jr.

John A. Buggs, Staff Director

Sirs and Madam:

The Maine Advisory Committee, pursuant to its responsibility to advise the Commission about civil rights problems in this State, submits this report on Federal and State Services and the Maine Indian.

Through its investigation and hearing, the Advisory Committee concludes that Maine Indians are being denied services provided other American Indians by various Federal agencies including the Bureau of Indian Affairs, U.S. Department of the Interior; and the Indian Health Service, U.S. Department of Health, Education, and Welfare. The Committee further concludes that Maine's Indians are entitled to these services and that their continued denial constitutes invidious discrimination against Maine Indians while at the same time placing a disproportionate burden on Maine taxpayers.

The Advisory Committee also found that half of the Indians in Maine are not receiving State Indian services because they live off-reservation. The Committee recommends that the State develop an integrated program of services for members of the four tribes--Passamaquoddy, Penobscot, Micmac, and Maliseet--regardless of residency on- or off-reservation.

Both State and Federal services have been withheld from a people whose need for assistance is tragically evident: unemployment among Maine Indians as of 1973 was reliably estimated at 65 percent; a 1971 survey of off-reservation housing for Indians found 45 percent substandard and poor;

health studies of the Maine Indians reveal chronic and severe problems of alcoholism, malnutrition, and disease; bicultural education, which is central to the preservation of tribal values and traditions, is largely nonexistent; the ratio of Indian children in foster care homes is 16 times that of the general population, yet only 4 of the 136 Indian children under foster care in Maine have been placed in Indian homes--homes which in some cases were built by the State but are now considered physically inadequate to meet State licensing standards; and while Indians are held responsible for law enforcement on reservations, they are unable to set safe speed limits on State highways crossing their lands. The Advisory Committee concludes that these facts are not isolated quirks of circumstance: they are the result of longstanding assumptions, policies, and practices of discrimination against Maine's Native American population.

In addition to its investigation of the denial of specific Indian services, the Advisory Committee reviewed the various Federal and State programs for which Maine Indians are generally eligible as citizens. In these programs, the Advisory Committee found a wide spectrum of attitudes toward Maine Indians. It is evident that there are areas of progress. Yet, it is also clear that Indians have seldom been included in the planning or decision-making process which affects their lives.

If the Advisory Committee has an overriding concern, it is that every State and Federal entity which may possibly have impact on Indian people in this State must have Indian representation and structural input in the development and carrying out of services. Beyond this, there must be expansion of social services from both State and Federal levels if Maine Indians are in fact to enjoy full and equal citizenship under the Constitution.

Finally, we request that you, as the chief officials of the U.S. Commission on Civil Rights, act to assure the representation of Native Americans in the employment posture of the Commission and that you consider holding national hearings in the near future on the problems of the non-federally recognized tribes.

Sincerely,

/s/

Terry C. Polchies  
Chairman, Indian Subcommittee

/s/

Gregory P. Buesing  
Acting Chairman, Maine  
Advisory Committee

## THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the Act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

## THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.



### ACKNOWLEDGMENTS

The Maine Advisory Committee wishes to thank the principal authors of this report, Andrew Akins; Gregory P. Buesing; Harriet Price, consultant to the U.S. Commission on Civil Rights; and Sonia Porter, Commission's Office of Field Operations. The Advisory Committee also wishes to thank the staff of the Commission's Northeastern regional office for its help in the preparation of this report. Legal review was provided by Eliot H. Stanley and overall supervision by Jacques E. Wilmore, regional director.

Final edit and review was conducted in the Commission's Office of Field Operations, Washington, D.C., by editor Bonnie Mathews, assisted by Rudella J. Vinson, under the direction of Charles A. Ericksen, chief editor. Preparation of all State Advisory Committee reports is supervised by Isaiah T. Creswell, Jr., Assistant Staff Director for Field Operations.

## FOREWORD

### STATEMENT OF THE HONORABLE KENNETH CURTIS, GOVERNOR OF MAINE, TO THE MAINE ADVISORY COMMITTEE TO THE U. S. COMMISSION ON CIVIL RIGHTS

I am pleased to take this opportunity to speak on a very vital issue of what governments are doing, and what they aren't doing, for our Maine Indians....I think that after too many years, it has become evident that the concerns of Maine Indians can best be presented and ultimately solved through the self government of the Indians themselves.....So I can foresee, in the near future, when the legislative appropriations will be and should be made directly to the tribal governments. I have also recently recommended to the 106th Legislature, now in session, that speaking privileges be restored to Indian Representatives in the Maine House, and I think that with John Stevens as Commissioner of the Department of Indian Affairs, that Maine Indians have started to gain control, as they should, of their own department. Couple this with House speaking privileges, this would give them the voice they deserve in the affairs of their State -- a voice that Maine also deserves to hear as a welcomed contribution to our efforts to grow and prosper as a State and as a people.

As you know, the State programs that are now being administered by the Department of Indian Affairs include, and rightly so, assistance to the needy, housing and health services and water and sewage projects. But all of these services because of an initial practice which gradually became tradition here in Maine, are pretty much restricted to the Indians who live on the reservation. Meanwhile, Maine Indians who do not reside on the reservations are actually deprived of these services....I think the appalling social conditions which are faced by many Indians living away from the reservations should be a matter of principal concern for the next few years. We have asked the 106th Legislature to create and fund a special office for off-reservation Indians. This office would become part of the Department of Indian Affairs. The office would then move to ensure that off-reservation Indians were aware of available governmental assistance and were aided in applying for benefits to which they are entitled.

But I think even the best efforts of State Government will not provide Maine Indians with treatment equal to that extended to perhaps Indians in other parts of the country. We all know that many Eastern Indians have long been excluded from the various benefits which were provided by the Federal Bureau of Indian Affairs. A major factor I see in improving the lot of Indians in this State would be to have official recognition by the Federal Government. So I would also like to strongly endorse the efforts to gain such recognition and I urge this Committee to make such a recommendation in its report to the United States Commission on Civil Rights.

There is no question that the availability of more federal benefits to be coupled with State aid and other agencies available would not only mean a greater sharing of the cost of Indian services, but a broadening of Indian programs themselves. I do know that Senator Muskie has presented legislation in Washington to accomplish this.

At the same time litigation which was filed by the Passamaquoddys seeks to have the Department of the Interior take legal action against Maine for alleged treaty violations and consequently force the Federal Government into official recognition and I'm very pleased to see that unanimous support has existed in the Congressional delegation within the State because we believe this should be done. We believe this legal determination should be made. It's going to clear the way to answer a lot more questions in the future.

Whatever the outcome of these various steps, I'd just like to say again it is the intention of my administration to continue to work to guarantee that the Indians of Maine have equal access to the quality of life to which all Maine people aspire but until that access is fully opened and free of obstruction there is no question that the "trail of tears" will go on and its specter will haunt us, and Maine and the nation will have failed to fulfill their just obligations to the Indians of this state.\*

\*February 8, 1973.

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## INTRODUCTION

There are approximately 3,000 Indians living in Maine. All four tribes--Maliseet, Micmac, Passamaquoddy, and Penobscot--are of the Algonkian linguistic stock, they originally belonged to the Wabanaki Confederacy, and they are culturally homogeneous.<sup>1</sup>

The majority of the Indian population is located in northeastern Maine, above and around the 45th parallel, with the greatest numbers in Aroostook, Penobscot and Washington Counties. Maine Indians have retained much of their culture, language, and government, and as this report will demonstrate, are aggressively seeking to redress the injustices of the past.

The Indians in Maine are Native Americans, their ancestors considered themselves one community, and today they comprise a distinct people. They have weathered the ridicule and racial discrimination of surrounding non-Indian communities. They have withstood long-standing governmental policies to separate them from other Indians in other parts

1. For general background on Maine Indian history, the Maine Advisory Committee referred to the following: Andrea Bear, "Malisite, Passamaquoddy Ethnohistory," Colby College Honors Thesis, 1966; Gregory Buesing, "Maliseet and Micmac Rights and Treaties in the United States," Association of Aroostook Indians, Inc., Houlton, Me., 1973; J.D. Prince, "Passamaquoddy Texts," Journal of the American Ethnographic Society, Vol. 10, 1921; Frank G. Speck, "Eastern Algonkian Wabanaki Confederacy," American Anthropologist, Vol. 17, 1915; R. Wallis and W. Wallis, The Micmac Indians of Eastern Canada, 1955.

of the continent, to erode their political and cultural ties, and to place them in categories such as "on-reservation" and "off-reservation" for administrative convenience. The attitudes of the dominant culture might have had a divisive effect on the Indians of Maine had they not been determined to maintain their identity.<sup>2</sup> This is important to keep in mind as this report outlines some of the dilemmas faced by Maine Indians today.

The Maine Advisory Committee spent more than a year reviewing statements, relevant documents and reports from the staff of the U. S. Commission on Civil Rights, and participating in a 2-day public hearing that it held in Bangor, February 1973.<sup>3</sup>

In view of the urgency of the conditions confronting Indians in Maine, the Advisory Committee in May 1973 released its preliminary findings and recommendations which received wide distribution throughout the State.<sup>4</sup>

Several of these recommendations have been put into effect, in whole or in part: an Office of Off-Reservation Indians has been established in the Department of Indian Affairs; the budget of the department was increased, though it is still not adequate; and an Indian Police Department has been established, headed by an Indian.

However, much remains to be done. The Maine Advisory Committee pledges to work diligently at the Federal, State, and local levels for the recommendations of this report. In this endeavor, we call upon all citizens of Maine to join us.

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2. Andrea Bear, "Passamaquoddy Indian Conditions," Preliminary Report to the Maine Advisory Committee, U.S. Commission on Civil Rights, 1972, Commission files.

3. Official transcript of the Maine Advisory Committee's open meeting in Bangor, Me., Feb. 7-8, 1973 (hereafter cited as Bangor Transcript). Available in files of U.S. Commission on Civil Rights.

4. Federal and State Services and the Maine Indian, Preliminary Findings and Recommendations, Interim Report of the Maine Advisory Committee, December 1973. (second printing)

## PART ONE

### POLICY AND LAW

American Indians hold a special place in our society. While they possess all the rights of citizens, they also have a unique status as Indians. Their status is grounded in aboriginal claims and tribal sovereignty dating back before the European migration to North America. It is guaranteed by the U.S. Constitution and Federal statutes, and in Maine, by the State constitution and statutes.<sup>5</sup> In a sense, North American Indians have more rights under the law than other citizens. It is a great national irony that their rights both as citizens and as Indians have been and continue to be ignored.

The dilemma of Maine Indians is worse than that of many other Indians, because even though Maine Indians experience problems identical to those of other Indians, the Federal Government has systematically denied Maine Indians the

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5. See generally, State of Maine: A Compilation of Laws Pertaining to Indians, Maine Rev. Stats. 1964, as amended through 1973, prepared by the Maine State Department of Indian Affairs, Augusta, Me., January 1974.

protection and services which it provides other Indians.<sup>6</sup> State services to Maine Indians are inadequate and applied unevenly. Consequently, they are left to struggle with others for non-Indian programs which are limited.

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6. "Indian Eligibility for Bureau Services," Report of the (Ernest) Stevens Committee, Bureau of Indian Affairs, U.S. Department of the Interior, 1972, in Commission files. This report concludes, at p. 39: "The 13,000 Indians who live on so-called 'state reservations,' have long been improperly denied federal Indian services and protection. These denials have resulted in large part from oversight by the BIA, which shifted its attention to the Western frontier after the Removal Era. Under the Indian Non-Intercourse Act of 1790 (now codified at 25 U.S.C. 177) these reservation lands are no less entitled to Federal status than their western counterparts, and their inhabitants are equally entitled to BIA services..."



## I. SELF DETERMINATION

Maine Indians have a keen awareness of the complexities of their dilemma and a strong sense of self-determination. Tribal members who testified at the Maine Advisory Committee's hearing described their people's long struggle for tribal autonomy and self-determination.

Richard Hamilton, the Penobscot director of the Indian Island Operation Mainstream, said:

The Passamaquoddy, Micmac, Maliseet, and the Penobscot Nations have existed as an ethnic entity for many centuries. Nine-tenths of that time we controlled our own destiny and asked favors of no one. The remaining one-tenth of this time has seen continual erosion of our sovereignty until it has reached its present level.

Little needs to be stated to outline the present situation....the high school dropout rate is 70 percent, and the standard of living is way below the national level.

Since the Anglo-European invasion, Maine Indians have been subjected to continuous and unremitting social and economic injustices. In our present enlightened age everyone deplores the 'plight' of the Indians. Yet no non-Indian has had significant success in improving the record. Short of termination, no one sees an end to the present social problems.

...social justice will not come to a powerless and impoverished group. Welfare or general assistance is of little permanent value. They do not provide individuals with the means to make their own way in the world. However, through the eyes of an economist, we can see a sound future. Through economic progress, the Maine Indian can be independent again.....<sup>7</sup>

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7. Bangor Transcript, Feb. 8, 1973, pp. 319-321.

Wayne Newell, the Passamaquoddy director of the Wabanaki bilingual program at Indian Township, further explained Indian awareness:

...we have a very rich history. We have a very rich background. We have a very beautiful country at Indian Township, clean water, clean air. These are assets rather than liabilities. For years the educational system, as well as every other system in the United States and Canada and in the State of Maine, have told us that you've got to move off those reservations because they are bad places to live.

We are awakening our children to the glories and to the great benefits that exist at the reservation. We are looking educationally into the problem of self-image.

When we started the program, we assumed the children had a negative self-image when they came to the school.....But we tested children through many devices that were developed both by us and by some Spanish American language programs in Texas, and we found in conclusion that the children, in fact, have a very high self-image of themselves when they come to school.

They think that being a Passamaquoddy is the greatest thing in the world. They think the language is the greatest thing in the world. They think dancing and listening to the drum is the greatest thing in the world. And what the system does to them, be it on the reservation, be it in Princeton, be it in Houlton, Eastport, Perry, Pleasant Point, wherever it is, the system systematically teaches our children to be ashamed of our background.<sup>8</sup>

Indian testimony emphasized that Indians and non-Indians have different world views, and consequently Indian participation and expertise are vital to form workable programs with n

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8. Bangor Transcript, Feb. 8, 1973, pp. 275-276.

Indian communities throughout the State, both on and off the reservation. Mary Altvater, chairperson of the Pleasant Point Passamaquoddy School Board, testified:

And another thing we would like the Federal Government to do is to recognize proposals made by the [Indian] school boards, because we have had so many proposals submitted by others for us, and without our knowledge or consent. Maybe our proposals would not be as eloquent or as good; they might not conform to....the rigid standards that they ask, but it would be our proposal and it would be our program, especially for bicultural education.

And I say bilcultural and not bilingual, because we feel that the language is important, but the history is just as important because anyone can learn to speak Indian, but if you're not learning in your culture you have no basis to be proud of your heritage.<sup>9</sup>

Unity on these matters exists throughout the Indian community across generational lines. The Advisory Committee heard testimony from leaders who had spent their adult lives fighting for Indian rights. They described their long and tiring struggle against the insensitivity of agencies and the callousness of men in power. Yet there was no evidence that Indian will is flagging. Former Passamaquoddy Tribal Councillor Robert Newell, in expressing the great frustrations of Indian leaders who are more fluent in Indian than in English, described the treatment of a Passamaquoddy Chief who testified before a committee of the Maine State Legislature:

I understood what he said, and I believe that most of those people also understood what he wanted to say, but they didn't make any attempt to understand, they laughed. I saw these people, I saw two people elected to this legislature, one person nudge another person and sort of smile or laugh at this person who was trying to

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9. Bangor Transcript, Feb. 8, 1973, pp. 247-248.

express himself, trying to relate Indian problems to the people.<sup>10</sup>

The Indians of Maine have developed many forceful and articulate spokesmen. Nevertheless, it is clear that Indian voices are not being heard. Mr. Newell charged that "there is a conspiracy existing somewhere between the State agencies and the Federal agencies to keep Indians at a very minimum..."<sup>11</sup>

Many Indian witnesses during the Advisory Committee's hearing complained that the State of Maine has assumed the power to regulate such internal reservation matters as hunting and fishing, inter-Indian land transactions, and taxation.<sup>12</sup> Indian lands within reservations have been sold, leased, or given away by the State.<sup>13</sup> Maine's assumption of governmental power in these areas appears to the Advisory Committee to be in violation of Federal law which prohibits State Governments from interfering in such matters. Although there have been periodic efforts at reform, like the creation of the Department of Indian Affairs, the creation of Indian controlled school boards and housing authorities, the State has never acknowledged any inherent sovereign powers in the tribes.<sup>14</sup>

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10. Ibid., p. 334. Mr. Newell was director, Mainstream program, Peter Dana Point Indian Council at time he testified.

11. Ibid., pp. 330-331.

12. Francis J. O'Toole and Thomas N. Tureen, "State Power and the Passamaquoddy Tribe: 'A Gross National Hypocrisy'?" Maine Law Review, University of Maine School of Law, vol. 23, no. 1, 1971, pp. 10-13.

13. Bear, "Passamaquoddy Indian Conditions," pp. 1-2. The author states that from 1836 to 1951, Maine passed to non-Indian owners 15,000 of an original 30,000 acres ceded to the Passamaquoddys by the Treaty of 1794; 14,800 of the remaining 15,000 acres were then leased by the State, leaving the Indians 200 acres on which to live.

14. O'Toole and Tureen, "State Power," pp. 38-39.

Tribal representatives to the legislature have not been allowed access to their seats on the floor of the State House of Representatives or the right to speak on Indian matters before that body since the 1930's. Attempts to resume this practice have been repeatedly blocked by the majority of the legislature.<sup>15</sup>

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15. See debate on L.D. 287, introduced by Rep. Kenneth Mills, 106th Maine State Legislature, 1973, regarding a proposed constitutional amendment to provide for Indian representatives to the State legislature.

## II. FEDERAL INDIAN SERVICES

In his address to Congress on July 8, 1970, the President proposed a progressive policy for Indian development based on the cornerstone of Indian self-determination:

It is long past time that the Indian policies of the Federal Government began to recognize and build upon capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

....In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency.<sup>16</sup>

The President's speech and legislative proposals, however, did not address the primary problem of Maine Indians with regard to the Federal Government. The primary problem for Maine Indians, however, is not whether they will administer their own programs, but whether they will have any programs at all, for as it now stands, Maine Indians are considered ineligible for the vast bulk of special programs which the Federal Government operates exclusively for Indians.<sup>17</sup>

Receipt of Federal Indian services is of critical importance for both the Indian and non-Indian citizens of Maine. According to an estimate prepared for the Maine Advisory Committee by the National Council on Indian Opportunity (a policy making board within the Office of the Vice President), Maine's share of Federal Indian services through

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16. Message from the President of the United States to the House of Representatives, House Document No. 91-363, July 8, 1970.

17. Stevens Committee Report, "Indian Eligibility," pp. 37-39

the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service of the Department of Health, Education, and Welfare, would amount to upwards of \$5 million per year. This is five times the amount presently appropriated by the State of Maine in lieu of the Federal funds.<sup>18</sup> Thus, if Maine Indians were to receive Federal funds, they would for the first time have access to sufficient funds to deal with their chronic social and physical problems, and the State would be able to substantially reduce its present outlay.

Standing between Maine Indians and Federal Indian services is the doctrine of "Federal recognition." The Federal statute under which the bulk of Indian services are appropriated, the Snyder Act, gives the Secretary of the Interior authority to assist Indians "throughout the United States."<sup>19</sup> When Maine's elected officials challenge the denial of these services to Maine's Indians, as they have done regularly (most recently in May 1973 when Governor Curtis led a delegation of Maine Advisory Committee members and tribal leaders to Washington to meet with the President's Special Assistant on Indian Affairs, Bradley Patterson), they are told that Maine Indians are ineligible for Federal Indian funds because they have not been officially "recognized" as Indians by the Federal Government.<sup>20</sup> The denial of Federal

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18. Letter from Daniel McDonald, Assistant Executive Director, National Council on Indian Opportunity, Office of the Vice President, to Hon. Harvey Johnson, Chairman, Maine Advisory Committee, May 1, 1973, in response to questions raised at Bangor hearing. (Bangor Transcript, Feb. 7, 1973, pp. 77-78) The estimate is based on services currently provided by BIA and IHS to Indian populations comparable to Maine's.

19. 42 Stat. 208, 25 U.S.C.A. § 13 (1921).

20. Copies of congressional correspondence pertaining to the "recognition" question are included in the Appendix as Exhibits I - IV, courtesy of the office of Hon. Edmund S. Muskie, U.S. Senate.

services to Maine Indians has been a prime concern of Maine's Congressional delegation. In a letter to the President in June 1973, they argued that the use of "Federal recognition" as an administrative vehicle for denying services to Indians has no basis in law.<sup>21</sup>

When asked how the tribes can be recognized, the Federal officials reply that they must either enter into a treaty with the United States, be specifically "recognized" by Congress, or have had a consistent course of dealing with administrative officials of the Federal Government.<sup>22</sup> The Maine officials pointed out that Indians have had contacts with Federal officials before, indeed that the Federal Government funded a school for Maine Indians in the 19th century and Maine Indian students have attended various Federal Indian boarding schools. They were told these contacts were not sufficient. Asked why, if these prior contacts were not enough, Maine Indians cannot now begin establishing the necessary contacts, Federal officials replied that Indians cannot begin having consistent contacts unless they have had them in the past.

The National Council on Indian Opportunity (NCIO), the only Federal Indian Agency which appeared before the Advisory Committee, was created by Executive order of President Lyndon B. Johnson in 1968, and placed within the office of the Vice President. It was given a broad mandate to encourage the full use of Federal programs for Indians, coordinate activities of the various Federal departments as they relate to Indians, evaluate program effectiveness, and recommend new programs. It is composed of eight Indian members and eight Cabinet members. Indian members are chosen nationwide but none represent non-federally recognized tribes, nor has NCIO appointed non-federally recognized tribal members to their subcommittees. Thus Maine Indians, as well as nearly all other eastern Indian tribes, have no voice in the development of national Indian policy.<sup>23</sup>

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21. Letter from the Maine Congressional delegation to the President, June 5, 1973, included in the Appendix as Exhibit III.

22. See Exhibits II, IV, Appendix.

23. Bangor Transcript, Feb. 7, 1973, pp. 70-86. The National Council on Indian Opportunity was disbanded June 30, 1974.



### III. STATE POLICY AND STATE SERVICES

Since Maine Indians have been denied Federal Indian protection and services they must cope with Maine Indian policy which is both limited and inconsistent. Maine, for instance, was the last State in the Union to grant its Indian population the right to vote. This process was begun in 1954 but not completed until 1967, nearly a half century after the Congress acted to assure Indians that right.<sup>24</sup> However, in 1965 Maine was the first State to create a Department of Indian Affairs.<sup>25</sup>

Maine Indians -- Maliseet, Micmac, Passamaquoddy, and Penobscot -- have a special position in the Maine law through the State Constitution, statutes, and various treaties.<sup>26</sup>

As on the Federal level, the State has developed administrative interpretations as to which Indians are eligible for State Indian services. Two arguments have been developed. One is that Indians whose tribes have treaties with the State are eligible; the other is that only on-reservation Indians may receive services.<sup>27</sup>

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24. See Article II, Section I -- "Elections" -- Constitution of Maine, as amended by the Act of Sept. 21, 1954; also, see Title 21 Sections 1621-1622, Maine Rev. Stats., as amended, setting forth special provisions for Indian Voting Districts. As late as 1967, the Maine Secretary of State held that the 1954 Constitutional amendment gave Indians only the right to vote for representatives to the State Senate, not House. Rep. Kenneth Mills of Eastport is credited with threatening court action to assure full franchise, which occurred in 1968. (Source: Memorandum to file, 8-2-74, by Gregory Buesing, Secretary, Maine Advisory Committee)

25. Created under Chap. 1351, Sec. 4702, Maine Rev. Stats. 1964, as amended (P.L. 65, c. 340).

26. State of Maine: Compilation of Laws Pertaining to Indians.

27. Bangor Transcript, Feb. 7, 1973, pp. 9-31. Testimony of John Stevens, Commissioner, Maine State Department of Indian Affairs, Augusta.

The State recognizes treaty obligations to Passamaquoddys and Penobscots and claims to have fulfilled them. It does not recognize any treaty obligation to Micmacs and Maliseets.<sup>28</sup>

The Micmacs and Maliseets, however, do not have any reservations in Maine although there is some legal question about this since they were connected with the Treaty of 1794 between the Commonwealth of Massachusetts and the Passamaquoddys, a treaty recognized by the now State of Maine.<sup>29</sup> The Micmacs and Maliseets were also historically instrumental in assisting the Americans' claim to all of northern and eastern Maine during the American Revolution, along with the Passamaquoddys and Penobscots. This began a trust relationship with the U. S. Government.<sup>30</sup>

Those Micmacs and the Maliseets who live in Canada, through the Jay Treaty of 1796, have a right to come into the United States and acquire employment without having to register as aliens. They also have full hunting and fishing rights in proportion with other Indians in Maine.<sup>31</sup>

The second criterion for determining eligibility for State Indian services is residence on a reservation. The legislation creating the Department of Indian Affairs makes no distinction between on and off-reservation Indians, but rather mandates the DIA to serve Indians who are members of tribes.<sup>32</sup>

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28. Buesing, "Maliseet and Micmac Rights," pp. 22-25.

29. Treaty with the Passamaquoddy Tribe of Indians, by the Commonwealth of Massachusetts, Sept. 29, 1794, in VIII Maine Historical Society, Documentary History of the State of Maine 98-102 (2d ser. 1902).

30. Buesing, "Maliseet and Micmac Rights," pp. 22-25.

31. Ibid.

32. Ch. 1351, Sec. 4702 M.R.S.

However, Maine's Department of Indian Affairs provides services only to Passamaquoddys and Penobscots residing on reservations. This may be in conflict with the legislation which created that agency.

The definition of an Indian -- a person of at least one quarter Indian blood -- is provided by another statute.<sup>33</sup> The term "tribe" however, is undefined. During the Advisory Committee's hearing, the Maine attorney general's office promised to provide a clarification of this term. The promise was later rescinded by the attorney general who stated that the issue was pending in litigation.<sup>34</sup> The Advisory Committee was unable to discover any pending litigation which directly dealt with this issue.

In 1968 the Governor's Task Force on Human Rights recommended that the statutes on Maine Indians be clarified and interpreted. This has not been done. As a result, many legal matters remain unsettled, and State legislators opposed to Indian legislation invoke the term "unconstitutional" to defeat bills which might otherwise have chance of passage.

The Advisory Committee found numerous examples of the inconsistent nature of the State's policy for providing Indian services:

Of the four Maine Tribes -- Maliseet, Micmac, Passamaquoddy, and Penobscot -- only members of the latter two who live on-reservation receive health and welfare services from the State Department of Indians Affairs. Off-reservation Passamaquoddys and Penobscots do not.

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33. Ch. 1351, Sec. 4701 M.R.S.

34. Bangor Transcript, Feb. 8, 1973, p. 142 P.J. Perrino, Assistant Attorney General, Augusta, stated "...I would be more than happy to do the research and render an official opinion as to what a tribe is, rather than to quote something off the top of my head..." By letter of April 19, 1973 from Jon Lund, Attorney General, Maine, to Harriet H. Price, consultant to the U.S. Commission on Civil Rights, the agreement to render the opinion was postponed indefinitely.

The State will pay the transportation and tuition for Indians living on the reservation to attend schools off-reservation. However, the State will not provide similar services to off-reservation children to attend reservation schools.<sup>35</sup>

Indian women married to white men and living on the reservation cannot receive general assistance from the Department of Indian Affairs, although this is not true for an Indian man married to a white woman and living on the reservation.<sup>36</sup>

The Department of Indian Affairs (DIA) is authorized to pay medical and hospital bills for reservation health needs and to pay welfare bills for the unemployed on reservations. The health bills are submitted by doctors and hospitals to the DIA for payment, frequently without documentation. The welfare requests come through "Indian Agents" who are supposed to assess needs.<sup>37</sup> Indians said the process is degrading and ineffective.

Nineteen years ago the Maine State Department of Health and Welfare (DHW), using Indian trust funds, built homes on the Passamaquoddy reservations. These homes have been found to be fire hazards because they have high windows, only one exit, and poor heating facilities. Now the Bureau of Social Welfare of DHW says that the physical condition of these Indian homes poses an obstacle to licensing them for foster

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35. Bangor Transcript, Feb. 7, 1973, pp. 256-262, Testimony of Robert Gerardi, Maine Department of Education and Cultural Services (DECS), and Marion Bagley, Chairwoman, Maine Indian Educational Advisory Committee.

36. Bangor Transcript, Stevens testimony, p. 14. See also, testimony of Robert Wyllie, Director, Maine Bureau of Social Welfare, Bangor Transcript, Feb. 7, 1973, p. 229. Mr. Wyllie indicated that general assistance from his bureau would be provided to mixed couples living on Passamaquoddy or Penobscot reservations.

37. Bangor Transcript, Feb. 7, 1973, Stevens testimony, pp. 9-31.

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care.<sup>38</sup> When it comes to housing construction and finance, the Passamaquoddy Indians need permission from the State Governor to lease their own land to their own Tribal Housing Authority to build low income housing on the reservation.<sup>39</sup> Similarly, because of the State's claim to ownership of reservation land, the great number of Indian veterans who have volunteered for military service are denied housing loans by the Veterans Administration.<sup>40</sup>

The education of Indian children living on reservations is under a Supervisor of Indian Education in Maine's Department of Education and Cultural Services (DECS). Off-reservation Indians have no advocate nor do they receive direct services from DECS, although there are Federal monies designed to serve off-reservation Indians through State agencies, such as Title I funds for migrant programs provided by the Elementary and Secondary Education Act of 1965.<sup>41</sup>

John Stevens, Commissioner of the Department of Indian Affairs and an Indian himself, told the Advisory Committee that he viewed the DIA's role as one of advocacy for all

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38. Bangor Transcript, Feb. 7, 1973, p. 228. Testimony of Robert Wyllie, Director, Maine Bureau of Social Welfare. See also the Legislative Record, Maine House of Representatives, May 18, 1971, p. 2765, remarks of Rep. Doyle on L.D. 515 and H.P. 402 regarding guaranteed loans for Indian housing: "... The housing that was built on the Pleasant Point reservation, under the direction of DHW, was built with Indian money, not State money. These particular houses do not meet the fire standards of the state at the present time. In fact there was a severe tragedy in which several people died in one of those houses this year."

39. Chap. 1352, Sec. 4737, Maine Rev. Stats., 1964, as amended.

40. Bangor Transcript, Feb. 8, 1973, p. 34. Testimony of John D. Bunger, Assistant Director, U.S. Veterans Administration Office, Togus, Me.

41. Ibid., pp. 256-262. See also statement of Meredith Ring, Supervisor, Maine Indian Education, Augusta, Bangor Transcript, Feb. 7, 1973, p. 262.

Indians in Maine, and that he believed the State should make direct grants to the tribal governments who desire them, so they could use the appropriations more effectively.<sup>4</sup>

With a yearly budget of \$500,000, the DIA is able to provide only minimal health and welfare services. Since its inception, the DIA has had an annual deficit of \$100,000. With increased unemployment among Indians, however, the DIA is finding its role in health and welfare increasingly difficult to fulfill.<sup>43</sup>

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42. Bangor Transcript, Feb. 7, 1973, pp. 18,31.

43. Ibid.

Carte 21b

#### IV. STATE OF MAINE IN CONFLICT

A network of interconnected legal problems surrounds the Maine Indians' determination to receive Federal Indian services and to achieve their rights as Indians. These problems arise from the complexity of the relationship which exists between the Indians and the State and Federal governments, and is further complicated by aboriginal land claims in which the Indians are seeking damages for millions of acres of land allegedly taken from the tribes by the State with little or no compensation. The Federal relationship has been outlined in Section II. At the heart of the Indians' problems with the State of Maine lies a conflict in the State's perception of its responsibilities toward the Indians and of its own best interests.

The Indians' land claim is based on the premise that they are entitled to the protection of the Indian Trade and Intercourse Acts, Federal laws which since 1790 have outlawed any transactions involving Indian land which are not consented to by the Federal Government.<sup>44</sup> The Federal Government has frequently brought suit against State governments to get land or money damages for tribes which have lost land in violation of the Trade and Intercourse Acts.<sup>45</sup>

The Passamaquoddy Tribe had asked Louis Bruce, former Commissioner of the U. S. Bureau of Indian Affairs, to recommend that the U. S. Department of Justice sue Maine on the tribe's behalf. Commissioner Bruce agreed with the tribe and recommended that the Justice Department bring action, but was overruled by his superiors at the U. S. Department of the Interior. As in the case of the Snyder Act, these officials argued that the Trade and Intercourse Act is not applicable, and the government, therefore, has no duty to protect Maine Indians because they have not been

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44. Trade and Intercourse Act of 1790, ch. 33 § 4, 1 Stat. 138; revised by the Act of Mar. 1, 1793, ch. 19, § 8, 1 Stat. 330-31; recodified under the Act of June 30, 1834 as ch. 161 § 12, 4 Stat. 730; currently codified at 25 U.S.C. § 177 (1964). (Commonly known as the Non-Intercourse Act)

45. O'Toole and Tureen, "State Power," pp. 28-30.

"recognized" by Congress in a treaty of statute.<sup>46</sup>

The Passamaquoddys then filed suit against the Federal officials involved (Passamaquoddy v Morton) in which, among other things, they asked the court to declare that "Federal recognition" is an invalid basis for denying them protection of their land under the Non-Intercourse Act.<sup>47</sup>

By way of preliminary relief, the U.S. District Court for Maine ordered the Federal Government to file suit against the State on behalf of the tribe before the running of a Federal statute of limitations barred the action. This case is presently on file, and in it the Federal Government seeks damages from the State on behalf of the Passamaquoddy Tribe. Shortly before the statute of limitations was due to run, the Federal Government voluntarily filed an additional suit against the State on behalf of the Penobscot Tribe.<sup>48</sup>

By order of the court, the State of Maine was not obliged to take any action with regard to the two suits which the Federal Government had filed until the underlying recognition question was answered in Passamaquoddy v Morton.<sup>49</sup> The Maine attorney general, however, apparently decided that it was his duty to protect the State from the Indians' claims in any

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46. Memorandum from Thomas N. Tureen, Esq., Calais, Me., to Harriet H. Price, consultant, U.S. Commission on Civil Rights, Commission files.

47. Ibid. Full title of the case is Joint Tribal Council of the Passamaquoddy Tribe, et al. v. Rogers C.B. Morton, et al, Civil Action No. 1960, U.S. District Court, Div. of Maine, Northern Div., filed June 2, 1972. Brief in Commission files.

48. The Federal District Court Order was filed June 23, 1972. Subsequent Federal suits filed were U.S. v. Maine, Civil Action No. 1966 (D.C. Maine, Northern Div., June 29, 1972) on behalf of the Passamaquoddy Tribe, and U.S. v. Maine, Civil Action No. 1970 (D.C. Maine, Northern Div., July 17, 1972) on behalf of the Penobscot Tribe.

49. The stay was ordered on July 26, 1972, pending further order of the court.



way that he could (even though he also has a discretionary statutory duty to represent the Indians),<sup>50</sup> and he intervened in the Passamaquoddy litigation on the side of the Federal Government, arguing that the absence of "recognition" was a valid basis for the refusal of the Federal officials to honor the tribe's request for a suit against Maine.<sup>51</sup> In so doing, the attorney general has nonetheless, and perhaps inevitably, placed his office in conflict with other State offices, notably that of the Governor and with the Congressional delegation, which have been arguing that the "recognition" argument is not a valid basis for denying Federal services.<sup>52</sup> Moreover, since the Secretary of the Interior has indicated that he will consider Maine Indians eligible for Federal Indian services if the Indians obtain a favorable ruling on recognition in the Passamaquoddy litigation,<sup>53</sup> the State appears to be in a no-win situation: if the attorney general should succeed in helping the Federal Government win, or even delay losing on the recognition issue, his action will at the same time effectively prevent or delay Maine Indians from receiving Federal Indian services and the State from reducing its services outlay.

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50. Pursuant to Ch. 1351 Section 4709 Maine Rev. Stats., 1964, as amended.

51. Petition for intervention granted Jan. 17, 1973.

52. Letter to the President from the Maine Congressional Delegation, (Exhibit III in Appendix).

53. Based on letter from Deputy Solicitor, Office of the Secretary of the Interior, to Hon. Edmund S. Muskie, U.S. Senate, Apr. 2, 1973, in which the Department stated that the issue of eligibility turned on the litigation. (Exhibit II in Appendix).

## V. CONCLUSIONS AND RECOMMENDATIONS

1. The Maine Advisory Committee concludes that Federal Indian services are essential to the future growth and well-being of Maine Indians. Their continued denial is an invidious discrimination against Maine Indians and a disproportionate burden on Maine taxpayers. The Advisory Committee further concludes that the only legal impediment to their fair share of Federal services is the Federal Government's "recognition" requirement, and that the Secretary of the Interior will consider Maine Indians eligible for Federal Indian services if they establish that "recognition" is not a prerequisite for Federal protection in their land claims case. Realizing that the Maine attorney general has intervened on the side of the Federal Government in the land claims case in the exercise of his obligation to the people of the State of Maine, but also realizing the potential cost of possible delays, the Advisory Committee accordingly recommends:

That if the Indians are successful in obtaining a favorable decision from the U.S. District Court for Maine on the recognition issue in their present litigation against the Secretary of the Interior, that the attorney general not take appeal of such a decision, and join with the Maine Advisory Committee in vigorously pursuing Federal services for Maine Indians.

That the Secretary, U.S. Department of the Interior, take every administrative and budgetary action possible to assure Federal Indian protection and services to the four tribes of Maine; and

That the Secretary, U. S. Department of Health, Education, and Welfare, take every administrative and budgetary action possible to extend services of the Indian Health Services to the four tribes of Maine.

2. The Advisory Committee concludes that the recommendations of the Governor's Task Force on Human Rights in 1968 have not been implemented in regard to clarifying and interpreting statutes on Maine Indians, and as a result Maine Indians are hampered in lawfully exercising rights under our State Constitution and laws, and accordingly recommends:

That the Governor take appropriate steps to carry out the 1968 recommendations of the Task Force on this point.

3. The Advisory Committee concludes that half of the Indians in Maine are not receiving State Indian services because they live off the reservations. Yet, the Committee found nothing in the statutes that created the Department of Indian Affairs that limits its services on the basis of residency. Therefore, the Advisory Committee recommends:

That Maine develop an integrated program of services for members of the four tribes, regardless of residency on or off the reservations, and that the budget of the Maine Department of Indian Affairs be annually adjusted on the basis of need, taking both population growth and inflation into account.

That any efforts to acquire Federal Indian services be made on behalf of all Maine Indians.

4. The Advisory Committee concludes that the inherent right of Indian self-determination and tribal sovereignty is not being recognized by all governmental bodies. The Advisory Committee recommends:

That, as a matter of basic principle, both State and Federal governments reexamine their policies toward Native Americans in Maine and elsewhere, and affirm the inherent right of Indian self-determination and tribal sovereignty.

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Attachment

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Tuesday, August 23, 1977

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Three  
lines

Honorable William B. Gunter  
Kilpatrick, Cody, Rogers, McClatchey  
& Regenstein  
3100 Equitable Building  
100 Peachtree Street  
Atlanta, Georgia 30303

Dear Judge Gunter:

I am enclosing the Passamaquoddy/Penobscot  
Negotiating Committee's written response to your  
recommendation concerning the Maine Indian Claims.  
As the Committee also promised to forward a copy  
of their position to Bob Lipshutz, I am sending  
him a copy of their memorandum. We understand  
that you will be submitting the memorandum to  
the President, and look forward to hearing from  
you or someone else from the Administration in  
the near future.

On behalf of the Tribes I did want to thank  
you for your recent visit. I think that the  
meeting on Friday was constructive, and hope that  
you and Mrs. Gunter had an enjoyable visit at  
Campobello.

Sincerely,

Thomas N. Tureen

cc: Robert Lipshutz, Esq.

TNT/lp

*Bill Felt  
Indian Claims  
Maine*

TO: President Jimmy Carter  
FROM: Passamaquoddy/Penobscot Negotiating Committee  
RE: Report by William B. Gunter on Maine Indian Claims  
DATE: August 23, 1977

A. Our Assignment

The assignment of the Passamaquoddy/Penobscot Negotiating Committee is to act in the best interest of our People to reach a fair and equitable solution to the land claims. We have read and studied the report prepared by William B. Gunter. While we cannot fully accept the recommendations contained in that report, we do consider those recommendations a point of departure for negotiations leading toward a consensual agreement for settlement of our claims. This memorandum is intended to facilitate such a settlement by setting forth in more detail our position on this matter. You understand, of course, that while we are authorized to negotiate the details of a settlement, final approval and ratification must come from the People of our Nations.

B. Issues

1. Procedural Issues

Our primary procedural problem with Judge Gunter's recommendation is that it made no provision for negotiations. While Judge Gunter concluded that our claims have sufficient merit to warrant a settlement, he took the position in his recommendation



that if we did not accept the particular terms he put forth (which he admits were not the product of negotiation but were "pulled out of a hat") that Congress should extinguish all of our claims against private defendants (90% of our overall claim) without compensation. This we consider an outrage. It says to us that the United States, after promising Indians for two hundred years that it would respect Indian property rights just as it respects the property rights of non-Indians, is ready to abandon those principles, to declare moral bankruptcy, when faced with a claim as large and complex as ours.

This was the concern which we carried to Robert Lipshutz, when we met with him in the White House on July 28, 1977. It is our understanding that following that meeting the White House decided to attempt to reach a negotiated as opposed to an imposed settlement, and that Judge Gunter was to hold discussions with us during the month of August for that purpose.

When we met with Judge Gunter in Orono, Maine on August 19, 1977, we learned that Judge Gunter does not consider himself to be a negotiator, but was assigned merely to determine our specific response to his recommendation and to carry to you any counter offer that we might make. We told Judge Gunter that we did not object to his fulfilling this role, and that we would submit a memorandum to facilitate that purpose. But we are still deeply concerned about whether you, Mr. President, are committed to seeking a consensual solution to this problem, or if, after receiving our memorandum, you would still feel free to

simply recommend that Congress impose a settlement whether we agreed with it or not. We told Judge Gunter that if you are not committed to seeking a consensual solution, we are no further along than we were before. Judge Gunter, however, informed us that you are committed to seeking a consensual solution, and that he would convey to you our request and his recommendation that you appoint a negotiator or mediator to work out any differences which the White House might have with our position.

## 2. Substantive Issues

Our position on the details of the proposed settlement are not based on personal desires or gains. Nor is our position based strictly on what we believe we are legally entitled to. We have instead attempted to think in terms of what is minimally necessary to insure our goal of ultimate independence and the long term survival for our People, while at the same time trying to approximate the situation that our People would be in today if the federal government had fulfilled the promises made in the Revolutionary War and had indeed acted as a model trustee in our interests over the years. As we see it, this case is a test of the legal and moral system of the United States, and an opportunity, for once in history, for the federal government to deal fairly with Indian People.

We understand that the State of Maine has flatly rejected the Judge's recommendation for a settlement of that

portion of our claim which involves the State of Maine. Thus for purposes of this memorandum we will assume that the claim against the state will not be settled, but that we will jointly proceed against the State of Maine in court.

Our primary substantive problem with Judge Gunter's proposal for the settlement of our claims against private defendants is whether the terms of the proposed settlement constitute firm promises or only vague hopes. While we want to discuss the Judge's recommendation of \$25 million and determine whether the income from this amount of money will really make it possible for us to achieve our ultimate goal of economic independence, we are equally concerned about what is meant by "normal BIA services," whether we can be certain that the Secretary of the Interior will indeed obtain options to acquire 400,000 acres for us, and whether the federal government will guarantee sufficient funds to exercise those options. If these questions can be answered, and adequate assurances provided, we may be able to reach an agreement.

### C. Conclusion

The possible court actions based on these claims are not causing economic stagnation within the claims area. Actual court action may be reason for an upset of economic activity, but as long as good faith negotiations are underway, economic chaos need not occur. We have time in which to negotiate a settlement, and believe that if every one participates in good

faith, that it will not take unnecessarily long. We concur with Judge Gunter's public statement that a settlement could be reached before the first of the year. The question now is how such a settlement is to be worked out, and who will represent the White House in such talks. We look forward to hearing from you at your earliest convenience.

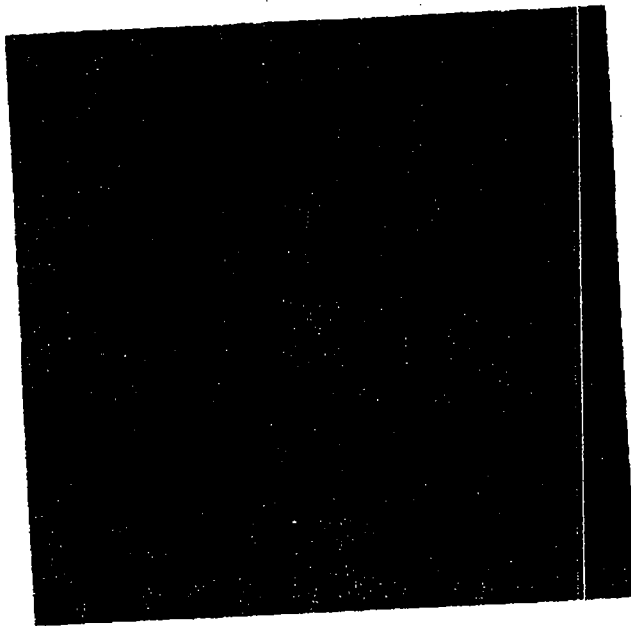
Attachment

7



**Tribal Issues Meeting  
for RAs and Deputy RAs  
Dallas, Texas**

**January 27, 1999**





**Government Performance and Results Act**

**Strategic Planning**

**Budget**

**Protect public health and safeguard the natural environment**

**Sovereignty**

**Trust**



# RA/DRA MEETING ON TRIBAL ISSUES

Wednesday, January 27, 1999

Sheraton Grand Hotel at DFW Airport

8:00 - 8:30 am	<b>Get Acquainted</b>	
8:30 - 8:45 am	<b>Welcome and Opening Remarks</b> - purpose of the meeting - review of schedule	Gregg Cooke, R6
8:45 - 9:15 am	<b>Why Do We Treat Tribes Differently</b> - sovereignty, treaties, trust	Leigh Price, R8
9:15 - 9:30 am	<b>Discussion and Informal Break</b>	
9:30 - 10:15 am	<b>Legal Issues in Implementing EPA's Indian Program</b> - definitions, jurisdiction, delegation, TAS - examples of current issues	Jim Havard, OGC
10:15 - 10:30 am	<b>Discussion and Informal Break</b>	
10:30 - 11:15 am	<b>Status of Indian Programs</b> - environmental conditions, EPA budgets, authorizations, TEAs	Felicia Marcus, R9 and Tom Wall, AIEO
11:15 - 11:45 am	<b>Review of Regional Indian Program Issues</b> - environmental problems and successes - key concerns	(3 - 4 minutes from each Region)
11:45 - 12:00 pm	<b>Break</b>	
12:00 - 12:45 pm	<b>Our Agency's Current Direction &amp; "Rethinking the American Indian Program"</b> - GAP (full funding and flexibility) - delegation and flexible alternatives - direct implementation - Federal WQS - protocols on St-Tribal Env. Mgt. Agreements - information management needs of Tribes	Chuck Fox, OW and Kathy Gorospe, AIEO
12:45 - 1:00 pm	<b>Break</b>	
1:00 - 3:00 pm	<b>Strategic Planning Discussion</b> - what can be accomplished in 1999 and 2000	Facilitator
3:00 - 3:15 pm	<b>Summarize Findings</b>	Facilitator
3:15 - 4:00 pm	<b>Wrap-up</b> - closing thoughts from each Region and AIEO	Gregg Cooke

**Indian Country I01**

## **HISTORICAL OVERVIEW OF THE DEVELOPMENT OF UNITED STATES FEDERAL INDIAN POLICY**

When the Europeans first reached the North American continent, they encountered more than 500 Indian nations occupying vast land areas rich with natural resources.

These "discoverers" of America found that the Indians were not homogeneous, but lived within loosely-formed bands and Tribes, speaking more than 300 languages and more than 1,000 dialects.

In 1744, the Treaty of Lancaster established that the Appalachian Mountains would be the physical boundary between the European settlers and the Indians. This general boundary was reaffirmed geographically when the 13 colonies won the war for independence.

During the Colonial Period, the British Crown did not have a coordinated policy toward the North American Indians or their Tribes. However, American Indian Tribes had signed treaties with other nations such as France and Mexico.

The first treaty between the U.S. and Indians was in 1778.

"The utmost good faith shall always be observed toward the Indians; their land and property shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded on justice and humanity shall from time to time be made, for preventing wrongs done to them, and for preserving peace and friendship with them." United States Congress Northwest Ordinance - 1787.

Beginning in 1802 during President Thomas Jefferson's administration, the American Federal Government began to give some thought to its dealings with American Indian Tribes, particularly the Tribes in the southern colonies—Cherokee, Chickasaw, Choctaw, Creek, and Seminole.

The emerging policy was to relocate the Tribes to the west banks of the Mississippi River on an as-needed basis to accommodate non-Indian colonists' desires for additional settlement lands.

During and after the Louisiana Purchase, President Jefferson believed that acquisition of the vast new lands west of the Mississippi River would afford ample spaces for the westward resettlement of the Indian Tribes.

On July 10, 1991, EPA Administrator William Reilly issued an EPA/State/Tribal Relations concept paper to further emphasize the Agency's commitment to the Indian Policy. On March 14, 1994, Administrator Carol Browner issued an all employee memorandum announcing her intention to draft new implementation guidance for Indian Tribes.

"No matter which continent your ancestors came from, if you are an American, you are part Indian in your roots." Larry Echohawk in 1992 addressing the Democratic National Convention

President Bill Clinton issued a memorandum to all heads of executive departments and agencies outlining six guidelines to ensure that the rights of sovereign tribal governments are fully respected and that the Federal Government operates on a government-to-government basis with the Tribes.

On July 14, 1994, EPA Administrator Browner materially strengthened the EPA Indian Policy by issuing a nine-point Agency action directive calling for even greater commitment of legal, programmatic, financial and staff resources.

Also, she made commitments for Agency advocacy of environmental statutory changes benefitting Indian Tribes.

Beginning in the early 1830's, President Andrew Jackson became more aggressive in resettling the Indian Tribes. During this administration the Indian Tribes in the southeastern United States were forcibly removed and relocated in Indian Territory (currently the State of Oklahoma).

By 1850, the United States had extinguished all European land claims from coast to coast allowing settlement.

By 1871, most Indian Tribes in the United States had signed treaties ceding most or all of their ancestral lands in exchange for reservations and welfare.

In 1887, the landmark General Allotment Act was passed. Under this Act 138,000,000 acres of Indian tribal reservation land was subdivided into 40, 80, and 160 acre plots and allotted (awarded) to individual Indians.

In 1934, the Indian Reorganization Act officially ended the allotment period. Tribes that voted to accept the provision of this Act were reorganized, and efforts were made to purchase land within pre-existing reservations to restore an adequate land base.

In 1944, the Federal Government decided and began planning to "get out of the Indian business." This deliberation continued for nearly a decade.

In 1953, the Period of Termination began and lasted for nearly a decade. During this period, more than 100 Indian Tribes were terminated. In the 1960's, the U.S. began a rejection of termination and slowly Tribes began to be reformed and re-recognized by the Federal Government.

The 1970's ushered in unprecedented new heights for Indian Tribes. President Richard Nixon's administration initiated actions and programs which were called "lofty days for the American Indian." A Cabinet Committee on Indian Affairs was created, and tribal leaders were given ready access to the President, Vice-President, the Director of the Domestic Council, Cabinet Members, and other key Nixon administration officials. Self-determination for Tribes was heavily emphasized.

The Federal Government sought to remove itself from over-managing the tribal affairs and encouraged greater self-governing by the Tribes.

In 1983, President Ronald Reagan's administration restated the unique "government-to-government" relationship between the Federal Government and the tribal governments, stressing the continuation of the self-determination policy. In November 1984, the United States Environmental Protection Agency issued its Indian Policy, the first Federal agency to do so. EPA Administrator William Ruckelshaus issued this first EPA policy and successive EPA Administrators have endorsed the policy.

**Add:**

**a paragraph on govt to govt consultation from Scott Sufficool**

**1984 Indian Policy**

**1994 Browner Cover**

**1994 Action Plan**

## **GLOSSARY OF TERMS**

**ALLOTMENT** - a U.S. policy, first applied in 1887, intended to break up tribally-owned Indian reservations by assigning individual farms and ranches to Indians. Allotment was also intended to discourage traditional community activities and to encourage private farming and assimilate Indians into mainstream American life. Allotment also means an individual tract of land assigned by the Federal government to an individual Indian.

The General Allotment Act of 1887 allowed 138 million acres of reservation land to be subdivided into tracts of 160, 80, or 40 acres and allotted to tribal members on an individual and family basis. Land owned in this manner was said to have "trust status" because the U.S. Government retained title to the land and could not be sold. The surplus land not allotted to individual Indians was opened for sale to white settlers. Ultimately more than 90 million acres of land was taken from the Indians.

**BUREAU OF INDIAN AFFAIRS (BIA)** - the United States Government agency, within the Department of Interior, chartered to manage trade and other relations with the Indians. The BIA also develops and implements programs that encourage tribal governments to manage their own affairs and to improve their educational opportunities and general social, economic, and environmental well-being. BIA has, along with several other Federal agencies including EPA, a major trust responsibility to Indians.

**CEDED TERRITORY** - lands within a reservation or aboriginal territory that have been sold by a Tribe or taken by the Federal Government. Often, gathering, hunting and fishing rights are not surrendered with the land.

**CHECKERBOARD** - the description of an Indian reservation that has within its boundaries property owned by and under the jurisdiction of non-Indians. A mixture of fee land and trust land.

**CULTURE** - the way of life including the shared history, language, values and attitudes, religion, law and legal systems, society, and economic and political systems.

**DEPENDENT INDIAN COMMUNITY** - defined by the Supreme Court as a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements: set aside by the Federal government for the use of the Indians as Indian land and under Federal superintendence.

**FEDERALLY-RECOGNIZED TRIBE** - any Indian Tribe or Band which has been formally/officially recognized by the Secretary of the United States Department of the Interior (DOI). This Federal recognition makes the Tribe eligible for Federal financial assistance. A complete list of the Federally-recognized Tribes is published in the *Federal Register* annually. As of the 1996 publication, there were 565 Federally-recognized Tribes. All EPA Regions have resident Federally-recognized

Tribes, with the exception of Region 3. Also, not all States have resident Federally-recognized Tribes; e.g., the State of Arkansas.

**FEE LANDS/FEE SIMPLE** - land owned by tribal members, the Tribe, or non-tribal members that is not placed in trust with the Bureau of Indian Affairs and has no restriction on distribution. The owner is entitled to the entire property, with unconditional power of distribution during his/her life and descending to his/her heirs upon death, without restrictions. Generally, when fee lands are not within the exterior boundaries of the reservation, Tribes have no (or very limited) jurisdiction.

**INDIAN COUNTRY** - (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government including rights-of-way running throughout the reservation; (b) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired U.S. territory, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through those allotments.

**INDIAN** - an individual who is a member of an Indian Tribe, Pueblo, Band, Nation, Rancheria, or other organized group or community, including any Alaskan Native Village or Alaskan regional or village corporation. The term may be used interchangeably with American Indian or Native American.

**INDIAN TERRITORY** - an area in the south central United States to which the U.S. Government wanted to resettle Indians from other parts, especially the eastern States. This resettlement began in the 1830's. In 1907, the Indian Territory and Oklahoma Territory became the State of Oklahoma.

**INDIAN TRIBE** - a group of individual Indians, such as an Indian Tribe, Pueblo, Nation, Band, Rancheria, or community including Alaskan Native Villages or Alaskan regional villages, or other organized group or community.

**PUEBLO** - a Spanish term for a town or village of certain southwestern Indians. Also, the name of the group of Indian people of the southwest who inhabited and still inhabit these villages. The term "pueblo" can also be used to describe an individual Pueblo/Tribe or a Pueblo individual. Only the 19 New Mexico Pueblos and one Texas Pueblo currently carry the name Pueblo.

**REMOVAL POLICY** - a United States Government policy begun in 1830 which called for the sale of all Indian lands in the eastern and southern U.S. and the westward migration of Indians from those lands, across the Mississippi River. Many Plains Indians lost large portions of their lands in order to make room for the Tribes that were relocated.

**RESERVATION** - a tract of land set aside by treaty for Indian occupation and use.



**RESTRICTED LAND** - similar to Allotment land but the Indian holds the title. However, the Federal Government must approve the conveyance of the property.

**SELF DETERMINATION OR SELF-GOVERNANCE** - Tribes are accorded the authority to control and operate Federally-funded and administered programs whenever they choose to do so. The fundamental belief that tribal problems are best resolved at the tribal level using the collective resources of the nation.

**TERMINATION** - United States Government policy to remove Indian Tribes from government supervision and Indian lands from trust status, in effect from the late 1940's - 60's.

**TREATY** - an international legal agreement between sovereign nations. A contract negotiated between representatives of the United States Government or another national government and one or more Indian Tribes. Treaties dealt with surrender of political independence, peaceful relations, boundaries, terms of land sales, and related matters.

**TREATY RIGHTS:** These rights, like any other obligation of the United States, represent *the supreme law of the land*. As such, the protection of treaty rights is a critical part of the Federal Indian Trust relationship.

**TRIBAL TRUST LAND** - land owned by the Tribe, held in trust by the U.S. Federal Government for the Tribe.

**TRIBE** - a society consisting of several or many separate communities united by kinship, culture, language, and such other social factors as clans, religious organizations, and economic and political institutions.

**TRUST** - the relationship between the United States Government and many Indian Tribes dating from the late 19th century. Government agents managed the business dealings of the Indians including land transactions and rights to national resources, because the Indians were considered legally incompetent to manage their own affairs.

The Federal Indian trust responsibility is a legally enforceable fiduciary obligation, on the part of the United States, to protect tribal lands, assets, resources, and treaty rights, as well as a duty to carry out the mandates of Federal law with respect to Tribes.

In several cases discussing the trust responsibility, the U.S. Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of dealings between the United States and the Tribes.

**TRUST STATUS** - land allotted to Tribes and tribal members for their use. The Federal Government retains title to the land.

Source: "Region 6 Employee Guide to Indian Country," EPA/906-B-98-002, November 1998

## **Status of Indian Programs**

F

**Insert**

**Environmental Data For Indian Lands from Clancy.**

**GAP Paper**

**TAS Chart??**

**What are We Going to Do?**

## **SYNOPSIS OF TRIBAL PORTIONS OF THE EPA STRATEGIC PLAN**

**September 1997**

The mission of the Environmental Protection Agency is to protect human health and to safeguard the natural environment—air, water, and land—upon which life depends.

### **Introduction**

The Agency is committed to working with Tribes to assure the protection of human health and the tribal homeland environment in a manner consistent with a government-to-government relationship and our interest in conservation of cultural uses of natural resources.

### **EPA's Mission, Goals, and Principles**

We will work with Indian Tribes on a government-to-government basis to ensure the protection of the environment and human health in Indian Country, consistent with our trust relationship with Tribes and our interest in conservation of cultural uses of natural resources.

### **Agency Approaches to Achieving Our Goals**

**Goal 1—Clean Air:** The Agency will work with and support Tribes in developing and implementing plans to address air quality problems. In addition, EPA will offer tribal grants and technical assistance to aid in the development of Tribal Implementation Plans to support solutions that meet local needs.

**Goal 2—Clean and Safe Water:** EPA will conserve and enhance the ecological health of the tribal waters and aquatic ecosystems so that 75% of waters will support healthy aquatic communities by 2005. Furthermore, the percentage of waters designated by Tribes that will provide safe drinking water after treatment will increase. Halting the net loss of wetlands and moving toward a net gain is integral to accomplishing the goal. EPA will work with Tribes to characterize risks, rank priorities, and implement a mix of voluntary and regulatory approaches through nonpoint source management programs.

**Goal 3—Safe Food:** No specific reference to Tribes.

**Goal 4—Preventing Pollution and Reducing Risk:** By 2003, 60% of Indian Country will be assessed for its environmental condition, and Tribes and EPA will be implementing plans to address priority issues. EPA will work with Tribes, establish an environmental presence in Indian Country, develop and implement a framework for conducting comprehensive tribal environmental assessments, and complete Tribal Environmental Agreements that identify joint priorities.

**Goal 5--Better Waste Management:** EPA will enhance the role of Tribes in implementation of waste and voluntary cleanup programs.

**Goal 6--Reduction of Global and Cross-Border Risks:** By 2005, EPA will reduce transboundary threats to human health and shared ecosystems in North America consistent with our bilateral and multilateral treaty obligations in these areas, as well as our trust responsibility to Tribes.

**Goal 7--Expansion of Americans' Right to Know:** By 2005, EPA will meet or exceed the Agency's customer service standards in providing sound environmental information to tribal partners. The Agency will engage in more frequent dialogues with tribal governments, and improve the exchange to produce more sound environmental data and tools.

**Goal 8--Sound Science, Improved Understanding of Risk:** No specific reference to Tribes.

**Goal 9--Credible Deterrent to Pollution and Greater Compliance:** No specific reference to Tribes.

**Goal 10--Effective Management:** No specific reference to Tribes.

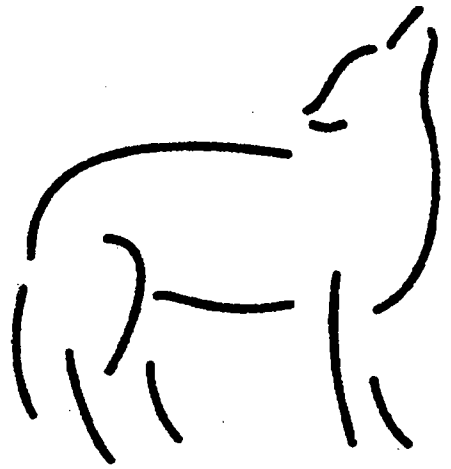
### **New Ways of Achieving Our Overall Mission, Key Cross-Agency Programs**

The responsibilities of the Indian program include protecting the health of the millions of Indians and non-Indians residing within Indian Country borders, addressing the environmental needs of the Tribes, and safeguarding the natural environment.

### **Assessing Our Results**

Our success in meeting these objectives will depend largely on programs carried out by the Tribes and other partners in environmental protection.

Source: "Region 6 Employee Guide to Indian Country," EPA/906-B-98-002, November 1998





**Insert OW Tribal Strategy Summary**

**Insert OECA Tribal Strategy**

## Opportunities for Regional Administrators' Commitment

Area of Concern	Action Items to Consider	Notes
<b>A. Take Immediate Actions</b>		
<b>Increase Direct Implementation of Federal Programs in Indian Country by EPA to Address Existing Problems</b>	1. For every request for assistance in responding to an environmental problem in Indian Country, ensure that on-site technical assistance and legal support is made available to respond.	Agency resources not generally used to address Indian Country concerns may be required.
	2. Increase by 25% annually the number of inspections in Indian Country until 100% covered.	Work with Tribes to resolve any problems identified.
	3. Develop a government-to-government relationship with at least 10% of the Region's Tribes that are not expected to request authorization of EPA programs.	Using existing assessment information, target Tribes with the most impaired or vulnerable environments.
	4. Ensure that all NPDES and Air permits for regulated facilities in Indian Country will be written by EPA or reissued by EPA.	Some Tribes feel State issued permits are a threat to sovereignty.
	5. Determine which waters in the Region need Federal promulgation of WQS.	OW may proposed a rule to establish basic WQS for certain portions of Indian Country.
<b>B. Support Program Development</b>		
<b>Facilitate General Assistance Program Reform and Funding</b>	1. Agree to lend support the administration's effort to change the statute.	Per AIEO, RICs, and TOC EPA must build Tribal environmental programs that can act on problems.
	2. Develop and implement a funding request strategy.	Consider the entire Indian Program needs.

<b>Strengthen Regional Tribal Programs</b>	1. Include a Critical Job Element for resolution of issues in Indian Country in each RA and DRA performance standards.	Critical Job Elements could include Tribal activities in all staff performance standards.
	2. Require EPA programs to identify all of their activities in or impacting Indian Country.	Include a process to keep RNAOs informed.
	3. Require the RNAO to evaluate annually at least the top 10% most adversely impacted Tribal environments and inform appropriate Federal programs of problems identified.	RA facilitate any requests of EPA to other agencies.
	4. Find ways to involve Tribes in environmental management without program authorizations.	AIEO work group established to research. "638-type approach"
<b>Authorize Tribes to Implement Federal Programs</b>	1. Make reviews for approval of "Treatment in the Same Manner as a State" a priority.	Agency resources not generally used to address Indian Country concerns may be required.
	2. Devote adequate staff resources complete all requested program authorizations in a timely manner.	
<b>Strengthen Tribal Grants Accountability</b>	1. Ensure adequate FTE to manage and provide oversight of Tribal grants.	Does the Agency have workload guidelines?
	2. Offer grants management training to Tribes at least annually.	Some Tribes may lose program authorizations because of poor grant management.

